

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

VOIP-PAL.COM, INC.

Plaintiff,

v.

T-MOBILE USA, INC.,

Defendant.

CIVIL ACTION NO. 6:21-cv-00674 -ADA

**PLAINTIFF VOIP-PAL.COM'S RESPONSE TO DEFENDANT T-MOBILE'S NOTICE
OF SUPPLEMENTAL FACTS RELEVANT TO ITS MOTION FOR ATTORNEYS'
FEES AND COSTS**

Plaintiff VoIP-Pal.com, Inc. ("VoIP-Pal") respectfully submits this Response to Defendant T-Mobile's Notice of Supplemental Facts Relevant to Its Motion for Attorneys' Fees and Costs.

T-Mobile's Notice is improper because T-Mobile failed to seek leave of court before filing it. Local Rule CV-7(e) provides that after a reply brief is filed, "[a]bsent leave of court, no further submissions on the motion are allowed." Accordingly, the Court should not consider T-Mobile's Notice in ruling on T-Mobile's Motion for Attorneys' Fees and Costs.

Moreover, T-Mobile's Notice concerns facts regarding litigations not before this Court that are irrelevant to T-Mobile's Motion for Attorneys' Fees and Costs. VoIP-Pal's antitrust complaint in the District of Columbia addresses wholly different legal and factual grounds from the instant case. As stated in VoIP-Pal's Opposition to T-Mobile's Motion, T-Mobile fails to show how VoIP-Pal's conduct in any of its other litigations is somehow relevant to this case. *See* Dkt. No. 289 at 18. T-Mobile's claim that VoIP-Pal's allegations in the antitrust case are

baseless is unfounded. The court in the antitrust case has not held as much and it is not this Court's job to decide the merits of that case.

Finally, T-Mobile's reliance on VoIP-Pal's CEO Emil Malak's public statements is misplaced because those statements are irrelevant to the instant case. Contrary to what T-Mobile suggests, Mr. Malak did not opine that VoIP-Pal amended its antitrust complaint adding RICO and fraud claims to force a settlement with T-Mobile in the instant case. Mr. Malak spoke regarding settling the antitrust case. *See* Dkt. No. 298-1 at 3 of 6. Similarly, Mr. Malak's statements regarding the unconstitutionality of the America Invents Act were in response to a question as to why VoIP-Pal has shifted its focus away from its patent cases. *Id.* at 4 of 6. Misrepresenting Mr. Malak's statements fails to establish a need for deterrence or any exceptional conduct under § 285.

Accordingly, the Court should disregard T-Mobile's improvidently file Notice of allegedly relevant supplemental facts because it does not demonstrate any misconduct nor does it add support to T-Mobile's claim for attorneys' fees. Rather, T-Mobile's Notice is nothing more than an improper attempt to harass VoIP-Pal, to conflate unrelated legal actions, and to penalize VoIP-Pal for exercising its lawful rights.

Dated: January 23, 2025

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the forgoing **PLAINTIFF VOIP-PAL.COM'S RESPONSE TO DEFENDANT T-MOBILE'S NOTICE OF SUPPLEMENTAL FACTS RELEVANT TO ITS MOTION FOR ATTORNEYS' FEES AND COSTS** via the Court's CM/ECF system pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5(b)(1) this 23rd day of January, 2025.

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